

## **Remarks**

With entry of the foregoing amendment, claims 17-19 remain pending in the application. Claims 1-16 and 20-26 have been canceled without prejudice to presentation in a divisional application. Claims 17-19 have been amended to exclude non-elected subject matter without prejudice to presentation of the non-elected subject matter in a divisional application. Claim 18 has been amended to clarify the method of use of compounds of formula II. No new subject matter has been added by these amendments.

Applicants thank the examiner for withdrawing the rejections under 35 U.S.C. §§ 102, 103 and 112, second paragraph. Claim 18 stands rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to make and/or use the invention. Applicants respectfully submit that the amendments to claim 18 obviate this rejection and request that it be withdrawn.

Claims 17-19 stand objected to as containing non-elected subject matter. The Office Action states: "In the Office Action mailed 9-10-02, a generic concept was set forth which did not include a limitation of the variable 'R.' Upon further consideration, the 'R' variable has been limited." Applicants assert that this *ex post facto* restriction of the R group is improper, particularly in a Final Office Action, and therefore have not limited the R group to delete the aryl group of up to 12 carbon atoms. For the reasons of record, Applicants maintain the traversal of the restriction/election of species requirement. Specifically, Applicants respectfully submit that an improper implicit rejection of the claimed subject matter over art that has apparently not been made of record appears to form the basis of the requirement, without reference to the patentability of the compound as claimed. In contrast,

Applicants strongly assert that the patentability of the claimed compound over the art of record has been clearly established on the record, and therefore, request withdrawal of the *ex post facto* restriction of the R group.

### **Summary**

In summary, Applicants submit that each of pending claims 17-19 are in condition for allowance, and earnestly solicit notification to that effect. Should any issues remain with respect to the Application, Applicants earnestly request that the Examiner contact Applicants' undersigned representative at the number provided below.

### **Conclusion**

Applicants submit that the claims as amended are in condition for allowance and earnestly solicit a Notice of Allowance.

Respectfully submitted,

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